

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Empowering Consumer to Prevent and Detect	)	CG Docket No. 11-116
Billing for Unauthorized Charges (“Cramming”)	)	
	)	
Consumer Information and Disclosure	)	CG Docket No. 09-158
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170
	)	

**REPLY COMMENTS OF RCA – THE COMPETITIVE CARRIERS ASSOCIATION**

RCA – The Competitive Carriers Association (“RCA”) respectfully submits these comments in response to the Commission’s Further Notice of Proposed Rulemaking in the above-captioned proceeding (“*FNPRM*”). RCA represents the interests of more than 100 competitive wireless carriers, including many rural and regional carriers. RCA applauds the Commission’s efforts to protect consumers from unauthorized charges on their telephone bills. However, RCA members invest considerable time and resources to protect their customers. There is little evidence that cramming is a widespread problem in the wireless industry. Furthermore, voluntary industry efforts to prevent wireless cramming have proven to be an effective tool to protect competitive carrier customers from unauthorized third-party billing. Accordingly, a cramming mandate is unnecessary at this time.

**I. There is No Evidence that Cramming Is a Widespread Problem in the Wireless Industry, Indicating that Voluntary Industry Efforts Have Been Effective at Protecting Consumers.**

As previous commentors have exhaustively detailed,<sup>1</sup> there is no compelling evidence that cramming is currently a problem in the wireless industry. The Commission states in the *FNPRM* that only 16 percent of the cramming complaints it received from 2008-2010 relate to wireless services.<sup>2</sup> During that same time period, only 3.5 percent of all FTC unauthorized charge complaints concerned wireless cramming. Although in 2010, ten percent of complaints to the FTC related to wireless “unauthorized charges and debt,” that amounts to just one complaint for every 372,342 consumers, or 0.00027 percent of consumers.<sup>3</sup> As the data clearly indicates, current industry efforts have been effective at preventing widespread cramming in the wireless industry.

Substantial differences between wireless and wireline services make a mandatory “opt-in” requirement for third-party billing particularly unnecessary for wireless services. Unlike wireline services, wireless customers expect – and demand – the ability to place third party charges on their wireless provider’s bill. Consumers demand access to the robust market for mobile applications, ringtones, games, and numerous other services through their handheld device. The increasing popularity of smartphones has amplified the number of purchases consumers make for mobile content. Consumers expect the simplicity of an integrated billing process between third-party providers and their wireless carrier. Restrictive regulations will only

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<sup>1</sup> See, e.g., Comments of T-Mobile USA, Inc., CG Docket No. 11-116 (October 24, 2011) at 1-3; Comments of CTIA – The Wireless Association, CG Docket No. 11-116 (December 5, 2011) at 3-6; Reply Comments of Verizon and Verizon Wireless, CG Docket No. 11-116 (December 5, 2011) at 4; Reply Comments of AT&T Inc., CG Docket 11-116 (December 5, 2011) at 2-6.

<sup>2</sup> *FNPRM* at ¶ 20.

<sup>3</sup> *Consumer Sentinel Network Data Book for January-December 2010*, Federal Trade Commission, Appendix B3, at 80 (Mar. 2011); see also CTIA Comments at 5.

complicate established billing practices, lead to customer frustration and dissatisfaction, and threaten to stifle further innovation and expansion of wireless services and the “app economy”.

Furthermore, wireless carriers have consistently received exceptionally high ratings for consumer satisfaction, indicating that customers are happy with current protections established by the wireless industry, and that consumer concerns are swiftly resolved by wireless providers. RCA carrier members’ best competitive tools are stellar customer service and high customer satisfaction. RCA carrier members have had great success retaining customers and keeping churn rates low because of the individual attention they pay to each customer. RCA carrier members’ customer service representatives are available to walk customers through third party charges, and they do so routinely. For rural carriers, in particular, carefully tailored customer service and their personal attention to consumers provide a competition advantage. Regulatory mandates will unnecessarily restrain smaller carriers’ ability to tailor their billing practices to the particular needs of the rural or regional communities they serve.

Mandatory cramming requirements are unnecessary because RCA members already provide accurate and detailed information to their customers through detailed billings statements, updated websites, and individualized bill review. Industry efforts, such as the Mobile Marketing Association’s (“MMA”) Consumer Best Practices, CTIA’s Code for Wireless Service, and individual carrier initiatives are consistent with some of the proposed rules in the *FNPRM*,<sup>4</sup> and many carriers have practices that go beyond the rules proposed in the *FNPRM*. For example, the CTIA’s Code for Wireless Service requires, among other things, clear disclosure of rates and terms of service, separate identification of service charges from surcharges and taxes on a

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<sup>4</sup> See Mobile Marketing Association, “U.S. Consumer Best Practices: Version 6.1,” available at <http://www.mmaglobal.com/policies/consumer-best-practices>; see CTIA, “Consumer Code for Wireless Services,” available at [http://files.ctia.org/pdf/The\\_Code.pdf](http://files.ctia.org/pdf/The_Code.pdf) (“CTIA Code for Wireless Service”).

consumer's bill, and prompt response to consumer inquiries and complaints.<sup>5</sup> Currently, almost 97 percent of U.S. wireless subscribers are covered by the Code, and additional carriers have indicated that their practices comply, or exceed, the Code's requirements.<sup>6</sup> Additionally, the MMA Consumer Best Practices, which covers more than 90 percent of wireless subscribers, directly addresses cramming concerns by requiring carriers to implement a "double opt-in" approach for premium services.<sup>7</sup> As the miniscule level of consumer complaints regarding wireless cramming indicates, voluntary industry efforts have been successful at protecting consumers from unauthorized third-party charges, and an "opt-in" requirement for wireless providers is unnecessary.

The Commission should work with industry groups to advance voluntary industry practices that have proven effective at protecting consumers, while maintaining the flexibility for carriers to tailor their practices to best suit their respective customers' needs. The flexibility afforded by adopting voluntary industry efforts has proven to be an effective approach to address consumer billing concerns.

## **II. Adopting An "Opt-in" Requirement Will Impose Significant Costs on Wireless Carriers With Little or No Benefit**

Wireless providers, particularly small and regional carriers, will incur substantial costs to comply with cramming regulations. Carriers would likely have to modify their billing systems, update extremely complex software systems, develop new billing policies and procedures, provide additional training to consumer representatives, review or replace third-party billing agreements, and take other steps to implement the proposed cramming regulations. Ultimately,

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<sup>5</sup> CTIA Code for Wireless Service, at 2-3.

<sup>6</sup> Comments of CTIA – The Wireless Association, WC Docket No. 06-122 (July 9, 2012) at fn. 56; *see also* Comments of CTIA – The Wireless Association, CG Docket No. 11-116 (June 25, 2012) at 5.

<sup>7</sup> MMA, Consumer Best Practices at 14.

every consumer will bear the costs of compliance to address an issue that has only been troublesome for 0.00016 percent of wireless subscribers, according to CTIA.<sup>8</sup>

In addition to being unnecessary, a mandatory “opt-in” regulation will disproportionately burden small rural and regional carriers while potentially confusing consumers and reducing mobile broadband adoption. The requirements associated with a mandatory “opt-in” requirement would necessitate significant billing system upgrades, which present a flat cost to a mobile wireless carrier regardless of size. Smaller carriers have a limited customer base to distribute compliance costs associated with changing established customer notification systems and software. Similar to rural and regional carriers’ experience with other network upgrades and requirements, smaller carriers cannot distribute these upgrade costs across a large number of customers, exponentially increasing the upgrade cost per customer when compared to national carriers. It would take an average RCA member many years to recover the cost of these system upgrades, and they would be forced to pass this cost onto their subscribers. Additionally, add-on upgrades may only be incorporated into the next billing system upgrade. Requiring an unscheduled upgrade will result in significant, immediate costs. Therefore, cramming regulations will have the result of providing rural and regional consumers an unexpected and disproportionate increase in charges on their wireless bills.

Billing mandates could hinder innovation and limit wireless carrier’s ability to respond to consumer demand. As mobile broadband develops in new and innovative ways, the industry must retain the flexibility to update new billing practices that protect consumers while staying responsive to their needs. However, these services are still new to the wireless industry and rigid mandates could stifle innovation by limiting industry’s ability to respond to consumer demand. For example, certain RCA members – such as those providing prepaid service or offering “all-

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<sup>8</sup> Comments of CTIA – The Wireless Association, CG Docket No. 11-116 (October 24, 2011) at 2.

you-can-eat” pay-in-advance, flat-rate plans – do not regularly generate paper bills, and requiring them to do so would fundamentally alter their billing practices and business models.<sup>9</sup> Such a mandate would destroy the consumer-friendly simplicity of these pricing plans and will increase costs for both the provider and consumer.

As the primary function of mobile handsets shifts from voice to data, low income consumers have the most to gain from dynamic billing systems. Low income consumers traditionally do not have access to broadband internet, but are increasingly gaining access through their mobile devices. Unnecessary mandates could add an extra layer of complexity to mobile broadband access and may inhibit lower income consumers from accessing this vital resource.

For the foregoing reasons, the Commission should not impose the unnecessary, costly, and burdensome cramming regulations on the wireless industry. The Commission should support voluntary industry efforts that have proven effective in protecting consumers from unauthorized third party billing while maintaining the flexibility to tailor their practices to the service of their community.

Respectfully submitted,

/s/

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<sup>9</sup> Comments of MetroPCS Communications, Inc., CG Docket No. 11-116 (October 24, 2011) at 6-8.